

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

**IN RE: DIGITEK PRODUCT LIABILITY
LITIGATION**

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

**BRIEF IN SUPPORT OF DEFENDANTS' UNOPPOSED
MOTION FOR ENTRY OF A SCHEDULING ORDER**

On November 19, 2010, this Court entered Pre-Trial Order (“PTO”) No. 70, Doc. 412, which set forth the schedule of discovery for the remaining active cases in this MDL. Thereafter, four additional member cases were opened in this MDL – *McDaniel v. Actavis Totowa LLC, et al.* (No. 2:11-cv-00007) and *Lynn v. Actavis Totowa LLC, et al.* (2:11-cv-00008) on January 4, 2011; *LeeFlora v. Actavis Totowa LLC, et al.* (No. 2:11-cv-00020) on January 7, 2011; and *Olson v. Actavis Totowa LLC, et al.* (No. 2:11-cv-00100) on February 11, 2011. When the last of these cases had opened, three of the deadlines in PTO No. 70 had already elapsed and there were only forty-eight days left to complete basic fact discovery. Defendants’ counsel and the Plaintiffs’ Steering Committee conferred and agreed that basic fact discovery must be extended for the four most-recently opened member cases.

The parties further agreed on the proposed Scheduling Order attached as Attachment A. The order would extend the time within which the parties can conduct discovery, but would require that expert discovery be complete in time to permit briefing of the above cases for the joint Daubert/Frye hearing. The order would spare the Court and the parties from having to conduct a second joint Daubert/Frye hearing, thereby meeting the goals of an MDL by taking advantage of efficiencies and minimizing the costs of litigation.

This Court has the inherent and express authority to impose the proposed Scheduling Order under Rules 16 and 26(a) of the Federal Rules of Civil Procedure. Such an order is reasonable and not prejudicial because the parties have agreed to it.

For these reasons, Defendants respectfully request that this Court grant this Unopposed Motion and enter the proposed Scheduling Order attached as Attachment A.

Respectfully submitted,

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